

RECAP: Financial Services Committee Markup of Financial Product Approval Agency And Derivatives Legislation

October 19, 2009

WASHINGTON - Last week, the Financial Services Committee convened for a markup session of H.R. 3795, the Democrats' derivatives legislation and H.R. 3126, legislation to create a Financial Product Approval Agency.

Excerpts from the last week's markup follow:

Democrats On The Need To Continue Using Taxpayer Funds To Wind Down 'Systemically Important' Firms:

During considering of H.R. 3795, Ranking Member Spencer Bachus offered an amendment to ensure taxpayer funds are not use to bailout a derivatives clearinghouse. Rep. Ed Perlmutter (D-CO) discussed the need to use taxpayer funds to wind down 'systemically risky' financial institutions:

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Rep. Perlmutter: "The point is that if you have to declare something insolvent, this says there will be no money of any kind from the Federal government that will go towards derivatives in any way. And generally I agree with that, but there is going to be a point where institutions we find insolvent or are systemically risky, and we take them down, we liquidate them, and that's going to require federal funds."

Democrats 'Trick And Trap' Small Banks With An Illusionary Exemption:

Despite recognizing the enormous compliance burden such an agency would place on community banks and credit unions, Democrats on the Committee adopted an amendment offered by Congressman Brad Miller (D-NC) that offers what Ranking Member Spencer Bachus characterized during debate on the amendment as "illusory" exemptions for small institutions.

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Rep. Miller: "This amendment makes a distinction between banks with less than \$10 billion of assets, which is all but about 2 percent or less than two percent of banks, and credit unions with less than \$1.5 billion in assets, which is all but less than 2 percent of credit unions and allows their examination and enforcement to continue to be principally with their safety and soundness regulator. So they won't be subject to an additional examination by CFPB."

OR DOES IT?

Under the Democratic proposal, the CFPB would still write the rules, exposing small community institutions to inevitably conflicting mandates and more onerous regulations.

The illusion of the exemption was confirmed by Rep. Brad Miller:

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Rep. Miller: "CFPA still has ample opportunity to make sure the law is enforced. They can include CFPA employees on the examination team. They can tell the examiners what kind of information they need, what they need to come back with when they go and examine a bank, and they can make sure that violations do result in enforcement actions. They can request it of the safety and soundness regulator and if the safety and soundness regulator doesn't do it, they can bring it on their own. And, if the safety and soundness regulator just doesn't do the job, the CFPA can push him out of the way and take over with respect to a given institution."

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In response to a question from Rep. Patrick McHenry, Rep. Miller states: "The CFPA will still set the rules that will apply to everybody, but the people who actually show up at the bank or at the credit union will be the examiners from the safety and soundness regulator. And CFPA can have somebody, part of that CFPA employee part of their team, if they want to. They can tell the examiners from the safety and soundness regulator what they want to find out, what documents to get, what to look into, and bring it back to them so they can know what is going on."

On Tuesday, the Committee will reconvene to continue consideration of the Financial Product Approval Agency. It is expected the Democrats will offer another illusionary amendment which claims to restore elements of the preemption doctrine, but falls far short in providing the uniform standards needed for the smooth functioning of our national credit markets.

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